SOH HAU HUAT

v.

MOHD. NOR TAYA & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[CIVIL SUIT NO. P 1076 OF 1984 & NO. P1219 OF 1985]
23 JUNE 1992

DAMAGES: *Dependency claim under s. 7 of Civil Law Act 1956 and estate claim under s. 8 of the same Act - Same beneficiaries under both claims - Whether same beneficiaries can claim under both headings - Loss of contribution to EPF by deceased's employer - Whether beneficiaries entitled to be compensated - As claim arose in 1982, the 1984 amendments to Civil Law Act 1956 will not apply - Living expenses of deceased - Proper approach to meaning of living expenses - Annuity table applied to assess amount of loss of earnings.*

TORT: *Action arose out of a collision between a motor bus and a motor car - Driver of the motor car died and passengers injured - Both vehicles were travelling in opposite directions*

CIVIL PROCEDURE: *Interest - (i) Special damage (ii) loss of expectation of life.*

This action arose out of a fatal accident along the Karak - Kuala Lumpur Highway on 28 March 1982 between a motor bus driven by the 1st defendant and a motor car driven by the deceased in which two of the passengers were injured. The Civil Suit No. P1076 of 1984 was instituted in October 1984 by the lawful brother and administrator of the estate of the deceased. The passengers of the motor car also instituted a separate suit at the Sessions Court against the defendant for the personal injuries sustained. Both the cases were consolidated for hearing at the High Court. However, the passengers had reached an out of Court settlement.

The mother and wife of the deceased were the only dependants and their claims of damages were under the following heads:

(i) Dependency claim under s. 7 of the Civil Law Act 1956

(ii) Estate claim under s. 8 of the Civil Law Act 1956

(iii) Loss of expectation of life

(iv) Special damages

(v) Interest

Held:

[1] The first defendant was held to be 100% negligent.

[2] In assessing loss of earnings of the deceased the probable living expenses should be deducted. *(White & Anor. v. London Transport Executive* [1982] 1 WLR 791 - relied). However deceased's contribution to his dependants should not be taken into account. (*Noorianti bte Zainal Abidin v. Tang Lai Nge* [1992] 2 MLJ 242 - relied). Also, the plaintiffs were entitled to be compensated for the loss of contribution to EPF. (*Noor Azahar bin Habin v. Rajawsari a/p Sithampara Pillai* [1991] 3 CLJ (Rep) 339 - relied).

[3] The dependency claims of the mother and widow were rejected as these two dependants were also the same beneficiaries of the deceased. Therefore the claim under s. 7 of Civil Law Act 1956 was extinguished by the bigger award under s. 8 of the same Act.

[4] As for the special damages the interest rate of 3% per annum was allowed from the date of accident to date of trial and for the loss of expectation of life the interest rate was 6% per annum from the date of service of writ to date of trial. The said sums would also carry interest at the rate of 8% per annum from the date of judgment until the date of realisation (*Thangavelu v. Chia Kok Bin).*

[1st defendant held wholly liable for the collision. Damages and costs awarded accordingly.]

Cases referred to:
White & Anor. v. London Transport Executive [1982] 1 WLR 791 ***(foll)***
Noorianti bte. Zainal Abidin v. Tang Lei Nge [1990] 2 MLJ 242 ***(foll)***
Noor Azahar bin Habin v. Rajawsari a/p Sithampara Pillai & Anor. [1991] 3 CLJ (Rep) 339 ***(foll)***
Lai Wee Lian v. Singapore Bus Service [1978] Ltd. [1984] 1 MLJ 325 ***(refd)***
Lim Beng Yee & Anor. v. Low Yoke @ Lee Yooke [1991] 3 MLJ 2513 ***(refd)***
Ahmad Nordin bin Haji Maslan & Anor. v. Eng Ngak Hua & Ors. [1985] 2 MLJ 431 ***(foll)***
Tan Chooi Thin (widow) & Anor. v. Teo Whee Hong [1953] MLJ 203 ***(refd)***
Thangavelu v. Chia Kok Bin [1981] 2 MLJ 277 ***(foll)***
Murtadza bin Mohamed Hassan v. Chong Swee Pian [1980] 1 MLJ 216 ***(foll)***

Legislation referred to:
Civil Law Act 1956, ss. 7, 8

For the plaintiff - T.K. Ngan; M/s. Syarikat S.N. Fong
For the defendants - Balakumar; M/s. Azim, Ong & Krishnan

JUDGMENT

Lim Beng Choon J:

In this Civil Suit No. P1076 of 1984 (hereinafter referred to as this suit unless otherwise specified) the action arose out of a collision at and or along the 10th mile of the Karak-Kuala Lumpur Highway on 28 March 1982 between a motor bus No. CB 5399 driven by the 1st defendant and a motorcar No. CM 901 driven by one Soh Mee Leong. As a result of the collision Soh Mee Leong was killed and this suit was instituted on 2 October 1984 by one Soh Hau Huat who claimed to be the lawful brother and the administrator of the estate of Soh Mee Leong ("deceased") against the 1st defendant as driver of the said motor bus and the 2nd defendant as the registered owner of the same.

I should also mention that earlier on 17 February 1983 one Anor bin Along and another Runah binti Saman had instituted an action in Summons Case No. 114 of 1983 in the Sessions Court at Kelang against the same two defendants in this suit. After filing their joint statement of defence in that summons case the two defendants pursuant to an order of Court dated 29 January 1985 filed a third party notice against Soh Hau Huat (the plaintiff in this suit) in his capacity as administrator of the estate of the deceased and the two defendants' claim was for indemnity or contribution in respect of the claims of the two plaintiffs in the summons case. The third party duly filed his defence and thereafter the two defendants in this suit applied by way of summons in chambers dated 19 March 1985 to transfer the summons case from the Sessions Court Kelang to this High Court and to consolidate that summons case with this Suit. The application of the two defendants was accordingly allowed and on 9 May 1985 the two cases were duly consolidated and the title of this Civil Suit P1076 of 1984 was consequently amended by adding to it the title of Summons Case as Civil Suit P1219 of 1985.

I should also mention that in their joint statement of claim in Civil Suit P1219 of 1985, the two plaintiffs there namely Anor bin Alang and Runah binti Saman averred that they were, at the material time, passengers in motorcar CM 901 driven by the deceased and their claims for special and general damages arose from personal injuries sustained by them as a result of the collision. Before these two consolidated cases could come up for hearing apparently the parties in Civil Suit P1219 of 1985 had reached a settlement out of Court. However I cannot find any order of Court recording the terms of the settlement. Be that as it may, Counsel for the two plaintiffs as well as the two plaintiffs never appeared at the hearing of the two consolidated cases. Neither did Counsel for the plaintiff and the two defendants in this suit explain to this Court and/or make an issue regarding the absence of Counsel and the two plaintiffs in Civil Suit P1219 of 1985 at the hearing of this suit.

I shall now deal first with the issue of liability. The following facts are not in dispute:

(a) The 1st defendant was at all material times driving motor bus No. CB 5399 as servant and/or agent of the 2nd defendant who, was also at all material times, the registered owner of the said motor bus;

(b) On or about 28 March 1982, a fatal collision occurred at or about 6.45 p.m. between the motor car No. CM 901 driven by the deceased and the motor bus No. CB 5399 driven by the 1st defendant at or near the 10th milestone Kuala Lumpur/Bentong Road;

(c) At the material time the motor car CM 901 was travelling towards the direction of Kuala Lumpur from Bentong whilst the motor bus No. CB 5399 was proceeding from the opposite direction heading from Kuala Lumpur to Bentong;

(d) It was drizzling (*hujan renyai-renyai*) at the material time.

The first witness called by the plaintiff to testify on the issue of liability was Anor bin Along (PW1). In his evidence PW1 said that he was a passenger in motor car CM 901 who apparently sat in front of the said motor car by the side of the driver (the deceased). He also said that at the material time it was drizzling and there were not many vehicles using the road but the road was slippery. He was not able to say how the collision took place as he was looking at the left edge of the road while the said motor car was proceeding towards Kuala Lumpur. However he heard the sound caused by the collision of the two vehicles and he felt motor car CM 901 was swerving ("berpusing-pusing") apparently out of control and hit the metal fencing along the extreme edge of the left side of the road where it stopped. He claimed that prior to hearing the sound, the said motor car was proceeding normally and the driver (the deceased) had no occasion to give any signal neither did he use his brake. Under cross-examination PW1 reiterated that he did not see the collision of the two vehicles as he was gazing at the left edge of the road. He also admitted that he did not know at what speed was the motor car CM 901 travelling.

The second witness called by the plaintiff was Runah binti Saman (PW2) who also said that she was a passenger in motor car CM 901 at the material time and she was seated at the rear seat. Before the collision occurred she saw a motor bus travelling from Kuala Lumpur to Pahang swerving ("terhoyong-hayang") along the road. The motor bus was then about forty feet in front of the motor car CM 901. She also said that the deceased was driving the said motor car in a normal manner ("dalam keadaan biasa"). When she was asked under cross-examination to explain as to why she said that the motor bus "terhoyong-hayang", PW2 said she saw the motor bus was swerving from left to right ("bas terhoyong-hayang ke kiri ke kanan"). When pressed to admit that she could not say as to how the collision occurred, she readily did so. She was then questioned regarding the speed of the motor car CM 901

and her reply was that the said motor car was proceeding at a normal speed neither fast nor slowly. She also said that prior to the collision she did not hear any sound coming from the motor bus. Finally she claimed that she did make a report to the police regarding the collision.

The last witness for the plaintiff was one Mary Lim the mother of the deceased whose testimony was wholly related to the loss of support suffered by her. I shall deal with PW3's testimony later when I consider the claim for damages.

The 1st defendant himself ("DW1") testified for the defence. In his evidence, he said that he left Kuala Lumpur driving the motor bus No. CB 5399 at about 6 p.m. to go to Bentong. As he approached the 10th milestone Kuala Lumpur/Bentong road it was drizzling. That stretch of road was not a straight road but it had a bend. DW1 claimed that as he approached the 10th milestone he saw a motor car travelling in the opposite direction and the motor car was overtaking another motor car in front of it. The overtaking motor car thereupon skidded and knocked on to the right front tyre of his motor bus.

As a result of the collision, the right front tyre of the motor bus was forced out of the wheel and fell on to the road. The motor bus also went out of control and swerved to the right half of the road as one faces Bentong and finally it landed in a drain running along the right edge of the road. A short while later he corrected himself and said that he tried to swerve to his left but he could not go any further due to the metal parapel. DW1 then said that he was travelling at a speed of about 35 k.m.p.h. but he admitted that he could only give an approximation of the speed as the speedmeter was out of order. DW1 then went on to say that when he first saw the motor car, it was about 30 feet in front of him. It was after overtaking the other car that the overtaking car skidded, knocked on to the motor bus and then swerved to its left before it came to a halt. When the collision occurred it was raining quite heavily and he could not see anything ("saya tak nampak apa-apa"). DW1 then came out of his motor bus and approached the motor car. He saw two passengers in the motor car. Thereafter he went to the police station to lodge a report. He then accompanied the police to the scene of the collision where the police started their investigation and also took some photographs of the scene. Under cross examination he said that on the day in question he started work at 8.00 a.m. and he had made two trips to Genting Highlands and returned to Kuala Lumpur before taking the motor bus to Bentong.

Before he left for Bentong he did check the tyre pressure, the brake and the gear and the steering wheel of the motor bus. But when he was asked whether any mechanic had checked the motor bus on that day he said no. He was then asked when was the last time a mechanic had checked the motor bus to which he replied it was the duty of the station master to see that the motor bus was checked by a mechanic. He also said that he was taking the motor bus to Bentong as the Department of Road Transport had to examine the said bus. To a question about the condition of the road he said that the road was slippery when there was a drizzle but it ceased to be slippery when there was heavy rain. When pressed to answer whether at or about the time of collision was the road slippery he answered in the affirmative. Although he said that at the material time he was travelling near to the metal parapet along the edge of the left half of the road, he could not say whether the metal parapet was laid along the areas marked as D or E in the sketch plan at p. 3 of Bundle 'A'. He admitted that at the spot where the collision occurred the road was flat and he changed into 3rd gear when he saw the motor car was overtaking the other car in front. He explained that when he first saw the overtaking motor car, it had already passed by the other motor car in front of it. Thereafter the overtaking motor car skidded and he lightly applied the brake of the motor bus. When it was put to him that as the road was slippery and he was travelling fast he lost

control of the motor bus when one of its tyres was punctured, he flatly denied all such accusations. However he went on to say that he had no information regarding the condition of the four wheels of the motor bus. In re-examination he said that he had sufficient rest before taking the motor bus to Bentong that evening. He also said that there was nothing he could do to avoid the collision.

At the close of the case for the defence, Counsel for the plaintiff with leave of the Court called one more witness namely Teh Leh Hong (PW4). This witness was the wife of the deceased and her testimony was again related solely to damages which I would deal with later.

After a careful scrutiny of the evidence as a whole including the documentary evidence, I am of the opinion that the defendants' version and the evidence of DW1 cannot but inspire amazed incredulity for the following reasons:

First, it is important to note that there was a 8-foot wide sidepath along the edge of DW1's half of the road that is to say the left half of the road as one faces Bentong. With such a wide sidewalk along the edge of the road, one would have expected a reasonable careful driver to apply his emergency brake and swerve immediately to his left on to the sidewalk upon seeing the motor car CM 901 encroaching on his half of the road to overtake another motor car. Such a move to my mind is an inherent natural move which any reasonable driver placed in a situation encountered by DW1 would have taken. Whether such a move would be sufficient to avoid the collision is not a material point. What is important is that human instinct would most certainly drive DW1 automatically to adopt such a move under the circumstances. Yet DW1 did not say that he had done what one would expect him to do and instead gave an inherently incredible story of his stepping on his brake lightly, changing into third gear and continued to proceed along his half of the road to collide with motor car CM 901. I use the word "inherently incredible story" simply because such a conduct is simply and completely contradictory to the normal human conduct of a reasonable driver confronted by similar situation confronting DW1. Had DW1 swerved immediately to his left on the sidewalk it is most improbable that the motor car CM 901 would have knocked the right front tyre of the motor bus - it would be more probable that the point of impact would be against the right broadside of the motor bus as it would be this part of the motor bus that would be exposed had DW1 swerved the motor bus to his left. Furthermore upon the motor car CM 901 knocking against the right broadside of the motor bus the latter vehicle, by the force of the impact would be pushed further towards or even beyond the metal fencing lining the edge of the sidewalk. The motor bus would certainly not have landed (as shown in the police sketch plan) some 46' to the right half of the road as one faces Bentong.

Second, both the plaintiff's witnesses PW1 and PW2 said in their evidence that immediately prior to the collision the motor car CM 901 was travelling normally. Thus PW1 said, "Keadaan jalan raya ketika itu seperti biasa", and PW2 said, "Kereta dipandu oleh David dalam keadaan biasa." Had the deceased been overtaking another motor car some 30' away from the spot where the collision occurred surely both PW1 and PW2 would not have said that the motor car CM 901 was travelling normally prior to the collision and instead they would have told this Court about the incident of overtaking another motor car. The fact that they had not said anything about such an incident of overtaking and the fact that Counsel for the defendants did not even question them about the incident of overtaking let alone put it to them that such an incident did take place clearly shows that the deceased was not overtaking any car immediately before the collision. The incident of overtaking is an afterthought conjured by DW1 to save his own skin. Third, PW2 said without hesitation in examination that when

the motor bus was about 40' away it was swerving ("sebuah bas sedang terhoyong-hayang"). Under cross-examination PW2 persisted in saying that she herself saw the motor bus was swerving from left to right. I must mention here that I have no reason whatsoever to question the integrity of PW1 and PW2; neither have I any reason to disbelieve them. I say so for these reasons:

(a) both of them gave a straightforward narrative of what they saw and heard,

(b) they readily admitted what they did not see or could not remember thus.

(i) PW1 readily admitted that he did not see how the collision occurred as he was at the material time looking at the left side of the road. Neither did he know at what speed was the motor car CM 901 travelling,

(ii) PW2 likewise readily admitted that she was not sure about the location where the collision took place, the condition of the road that is to say whether it was a straight road or a winding road, the colour and registration number of the motor bus. She frankly admitted that she did not know how the collision occurred. But when it was put to her that since she was not sure about the condition of the road how could she be sure that the motor bus was swerving, she said without hesitation that she herself saw that the motor bus was swerving from left to right.

(c) both the witnesses have nothing whatsoever to gain. They have no interest at all about the outcome of this suit.

For the above reasons I have no doubt at all that they are witnesses of the truth for if it was otherwise one would expect PW1 to say in his evidence that he too saw the motor bus swerving just to corroborate the testimony of PW2.

Third, the position of both the motor car CM 901 and the motor bus CB 5399 as shown in the police sketch plan in Bundle 'A' is indicative of the motor bus CB 5399 encroaching on to the wrong half of the road at the material time.

Fourth, I am not satisfied that DW1 is a witness of the truth and I say so because of the inconsistencies in his evidence. The following are some of the inconsistencies:

(a) In examination-in-chief he said that he had a clear view and he could see the vehicle in front of him. He could see the motor car CM 901 overtaking another car some 30' in front of him. But immediately after making the statements he went on to say that when the collision occurred it was raining heavily and he could not see anything ("Saya tak nampak apa-apa"). Taking the combined speed of CM 901 and CB 5399 travelling in opposite direction at an absurd 30 m.p.h. a simple arithmetic calculation will show the distance which the two vehicles would cover in one second thus:

30 m.p.h. = 158,400 ft. divided by 3,600 seconds = 44 ft. It would therefore take less than one second for both the vehicles to cover 30 feet. It follows therefore that it would take less than one second before the collision occurred. Such being the case it is **impossible** for the weather to change from a drizzle to such a heavy rainfall that DW1 was blinded within the very short duration of less than one second. DW1 is no doubt a liar and his true character is patently exposed when he came under cross-examination when in answer to the question "Pada masa itu hujan lebat atau renyai?" and he answered "Ia renyai". He then went on to say persistently that after CM 901 had overtaken the other motor car, it went into a skid and that it was CM 901 that knocked into his motor bus and not the other way round.

(b) PW1 says (and I have no reason to disbelieve him) that upon hearing the sound of collision he felt the motor car CM 901 was out of control and was swerving. It came to a stop only when it hit the metal fencing running along the edge of the left side of the road. Now upon a casual scrutiny of the police sketch plan one would see that CM 901 came to a rest beside the curve line marked 'A' which is shown in the key to the said plan (see p. 4 of Bundle 'A') as the outer edge of the 10-foot sidewalk running along the edge of the left half of the road as one faces Kuala Lumpur. Upon a careful review of the evidence as a whole the only conclusion one can arrive at is that there was a metal fencing constructed along the outer edge of the sidewalk marked with the letter 'A'. Likewise when DW1 said that there was a metal fencing along the edge of his side of the road the metal fencing must be running along the **outer edge** of the 8-foot sidewalk along his side of the road that is to say at the curve line marked 'B' in the police sketch plan. Such being the case it is incredible for him to say that prior to the accident he was travelling near to the metal fencing simply because no reasonable driver would prefer to drive along the sidewalk instead of driving along a highway! To my mind the only reason prompting DW1 to make the statement is to show to the Court that when the collision occurred he could not take evasive action by swerving to the sidewalk as he was already travelling along the sidewalk and he was inhibited from proceeding further to his left because of the metal fencing. Indeed that is exactly what he implied by his evidence given under cross-examination.

In the ultimate analysis of the evidence of DW1 I have no hesitation in holding that he is certainly an unreliable witness. His version of how the collision took place is wholly unacceptable. It is true that DW1 in his police report said that CM 901 overtook another car and knocked on to his motor bus. But that report was made some 1 1/2 hours after the collision. DW1 therefore had sufficient time to conjure up a story to save himself from being charged for reckless driving. It is also interesting to note that in his police report (see p. 1 of Bundle 'A') he described himself as "jaga bas" and not as a "pemandu bas". His ability to drive a bus is therefore questionable!

From the above discussions I have no doubt that the collision was caused entirely by the negligence of DW1. I have no doubt that he was travelling very fast and when his motor bus skidded he lost control and thereupon the motor bus encroached on to the deceased's side of the road and collided on to the motor car CM 901. The force of the impact pushed CM 901 to swerve to its left until it hit the metal fencing where it came to a standstill. That the motor bus was going very fast is corroborated by the sketch plan which shows that the said bus was found crashing through the metal fencing on the left edge of the sidewalk as one faces Kuala Lumpur. No doubt DW1 said in evidence that he was travelling at 35 k.m.p.h. at the material time. But he had to admit that the figure given by him was based on his own estimation as the speedmeter of the motor bus was out of order at the material time.

I shall now proceed to assess damages. The following have been agreed:

(a)	Special damages	-	RM1,850
(b)	Loss of Expectation of life	-	RM5,000
(c)	Deceased's monthly earnings		
	(i) Salary RM1,600		
	(ii) Food allowance RM 520	-	RM2,120
(d)	Monthly contribution to the mother and wife	-	RM 600

The claims for damages can be conveniently marshalled under two main heads *viz.* estate claim under s. 8 of the Civil Law Act 1956 and dependency claim under s. 7 of the said Act. As the claims arose in 1982, the 1984 amendments to the Civil Law Act 1956 will not apply.

Estate Claim

Since the amounts in respect of special damages and loss of expectation of life have been agreed there remains the quantum for loss of earnings to be assessed as there is no claim for pain and suffering and loss of amenities.

In assessing loss of earnings, the parties have agreed at a multiplier of 16.

It is clear in law that there must be deducted from the earnings of the deceased a sum representing the probable living expenses of the deceased. The English Court in *White & Anor. v. London Transport Executive* [1982] 1 WLR 791 offers some guidance as to the proper approach to be adopted:

(1) Typical living expenses to be deducted including housing, travelling, insurance food etc.

(2) There should be included in living expenses, some amount for pleasure, including a vacation, entertainment, social activities and in some cases, a car.

To the above two items I should also add two more items *viz:*

(a) The deceased's contribution to his dependants should not be taken into account (see *Noorianti bte. Zainal Abidin v. Tang Lei Nge* [1990] 2 MLJ 242

(b) The plaintiff is entitled to be compensated for the lost of contribution to E.P.F. by the deceased's employer. (See *Noor Azahar bin Habin v. Rajawsari a/p Sithampara Pillai & Anor*. [1991] 3 CLJ (Rep) 339).

Bearing in mind the aforesaid principles I shall now proceed to assess the loss of earnings. From the evidence of PW4, Teh Leh Hong, the widow of the deceased (which has not been challenged) and the statement of agreed facts the following facts emerged:

The deceased worked in Genting Bhd. in Genting Highlands as an assistant management accountant and

(a) he stayed in staff-quarters free of charge and water and electricity to the staff quarters were also provided free of charge.

(b) the deceased lived a spartan life but he smoked cigarettes and consumed alcohol once in a while.

(c) he spent his free time watching movies in Genting Highland. However he was entitled to a stretch of 4-days' leave once a month and on such occasion he would visit his wife at Karak. He would sometimes go shopping with his wife or see movie with her.

(d) he was also entitled to annual leave but PW4 said he seldom took his annual leave. In any case this Court was not informed about the duration of his annual leave.

(e) he owned an old Honda Civic CM 901 which apparently he used to go to work in Genting Highland as well as to travel to Karak.

(f) he had his meals in Genting Highland and his wife sometime visited him in Genting Highland.

(g) he had a savings account of RM17,000.

(h) he had no other hobby.

With the above mentioned facts in mind the probable living expenses that should be deducted from the monthly earnings of the deceased are as follows:

(a) Food-cost of a meal in Genting Highland is undoubtedly slightly higher	-	RM 800
(b) Petrol and upkeep of motor car	-	RM 300
(c) Entertainment and sundry expenses	-	RM 200
		RM1,300

The monthly earnings of the deceased comprised of the following items:

(i) Monthly basic salary	RM1,600
(ii) Monthly food allowance	RM 520
(iii) E.P.F. contribution by deceased's employer at 11% of RM1,600	RM 176
Total	RM2,296

The multiplicand is therefore RM2,296 minus RM1,300 equals to RM996 or RM1,000 (round figure).

Now Counsel for the plaintiff urged me not to recourse to the annuity tables but rather to assess the amount of loss of earnings by applying the multiplicand to the multiplier (hereinafter referred to as the "direct multiplier"). Counsel cited the case of *Lai Wee Lian v. Singapore Bus Service (1978) Ltd.* [1984] 1 MLJ 325 and *Lim Beng Yee & Anor. v. Low Yoke @ Lee Yooke* [1991] 3 MLJ 2513 in support of his proposition. That case is a Privy Council case deprecating misuse of annuity tables. The Law Lords held the view that if the tables were used they must not be used by the direct application of English precedents as to the selection of the appropriate multiplier as it might result in double deductions made for advance payments. To obviate such a result a higher multiplier should be used. Thus the Privy Council said at p. 329 of the *Lai Wee Lian's* case:

> In a case when 10 years is the appropriate multiplier using the English system under which the multiplier is applied directly, the appropriate multiplier to be used with the tables ought to be some higher figure. This is obvious from comparison of the total award reached on each of the two systems. Thus on the basis of a multiplicand of RM600 per month or RM7,200 per annum and a multiplier of 10 directly applied, the total award would be RM72,000. Compare that with the total award of only RM55,584 shown in the tables for a multiplicand of RM600 per month with a multiplier of 10. In order to arrive at a total award of RM72,000 the multiplier under the tables would be approximately 15 years.

Be that as it may, the Privy Council stressed that "there is nothing contrary to law in the use of the tables" but the Law Lords warned of the danger of a double deductions if the English precedents of selecting a multiplier was adopted.

The *Lai Wee Lian's* case *(supra)* was cited in *Ahmad Nordin bin Haji Maslan & Anor. v. Eng Ngak Hua & Ors.* [1985] 2 MLJ 431. The three Supreme Court Judges who heard the appeal nevertheless preferred to use the annuity tables although the learned Judges were careful to point out that:

> The appropriate multiplier to be used with the Tables ought to be higher than the multiplier using the English system of direct calculation.

Needless to say that I am bound by the aforesaid observation of our Supreme Court Judges and it follows that I should use the annuity tables in assessing the capital sum. However that may be I should also ensure that the multiplier of 16 *albeit* agreed by the party is in consonant with the legal principle laid down by our Supreme Court Judges.

Now, the deceased was 30 years old when he met with the fatal accident. At the conclusion of the trial of this case on 18 March 1992 when Counsel for the plaintiff filed his written submission the deceased would be of the approximate age of 40. It is settled law that the retiring age is 55 years (see *Ahmad Nordin bin Haji Maslan's* case *(supra)*). It follows therefore the deceased could have worked for a period of 25 years had he lived. Taking into account the inevitable contigencies and uncertainties of human life, I would deduct 7 years and that would leave 18 years' purchase. Based on these figures my calculation of the loss of earnings is as follows:

(i) Pre-trial loss of 10 years (1982 to 1992) = RM1000 x 12 x 10 = RM120,000

(ii) Post-trial loss of 8 years (based on annuity tables)

= RM77,558.55 (or RM77,600 round figure).

To summarise the total awards:

(a)	Agreed special damages		RM 1,850
(b)	Loss of expectation of life (agreed)		RM 5,000
(c)	Loss of earnings	RM120,000	
	and	RM 77,600	
			RM197,600
	Total		RM204,450

Turning to the dependency claims under s. 7 of the Civil Law Act 1956, there is no dispute that the deceased has only two dependants namely Mary Lim, the mother of the deceased and Teh Leh Hong the widow of the deceased. Likewise there is no dispute that the deceased used to give RM400 per month to his wife and RM200 per month to his mother. Based on these two figures Counsel for the plaintiff has calculated that the dependency claim of the mother amounts to RM28,800 and the dependency claim of the wife is RM72,000 which would give a total of RM100,800 under the dependency claims.

Now it is well settled rule that when the dependants who claim under s. 7 of the Civil Law Act 1956 are the same beneficiaries of the estate of the deceased who claim under s. 8 of the said Act, any recovery under the latter section may diminish and may well extinguish any claim under the former section and that those dependants or claimants must not to any

extent be allowed to have their claims for damages twice over (see *Tan Chooi Thin (widow) & Anor. v. Teo Whee Hong* [1953] MLJ 203 and the more recent case of *Thangavelu v. Chia Kok Bin* [1981] 2 MLJ 277). In the present case there is nothing in the evidence to contradict my finding that the two dependants are also the beneficiaries of the estate of the deceased. That being the case the claims under s. 7 of the Civil Law Act 1956 are therefore extinguished by the bigger award allowed under s. 8 of the said Act.

On the question of interest I will follow the guideline set out in the *Murtadza bin Mohamed Hassan v. Chong Swee Pian* [1980] 1 MLJ 216 and make the following order:

(1) The agreed special damages of RM1,850 will carry interest at the rate of 3% per annum from the date of accident i.e. 28 March 1982 to date of trial i.e. 18 March 1992.

(2) the agreed damages for loss of expectation of life of RM5,000 will carry interest at the rate of 6% per annum from the date of service of writ i.e. 15 October 1984 to date of trial.

The aforesaid sums will thereafter bear interest at the rate of 8% per annum from date of judgment until the date of realisation.

I invite Counsel for plaintiff to address me regarding apportioning of the awards to the beneficiaries of the estate of the deceased.

The defendants shall pay the costs of the proceeding to the plaintiff.

Also found at [1992] 4 CLJ 2185